



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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May 4, 2009

TECHNICAL STAFF REPORT

Petition Accepted on August 4, 2008

Planning Board Meeting of May 28, 2009 (Advisory Authority Rules)

Zoning Board Hearing to be scheduled

Case No./Petitioners: **ZB 1073M – Edna May Harbin, Robert Harbin, Jr., Kimberly Harbin Taylor**

Location: Second Election District
Northwest corner of the MD 99 intersection with Old Mill Road/Bethany Lane; Tax Map 17, Grid 8, Parcel 27, Lot 2; 9920 MD 99 (the "Property" or "Site").

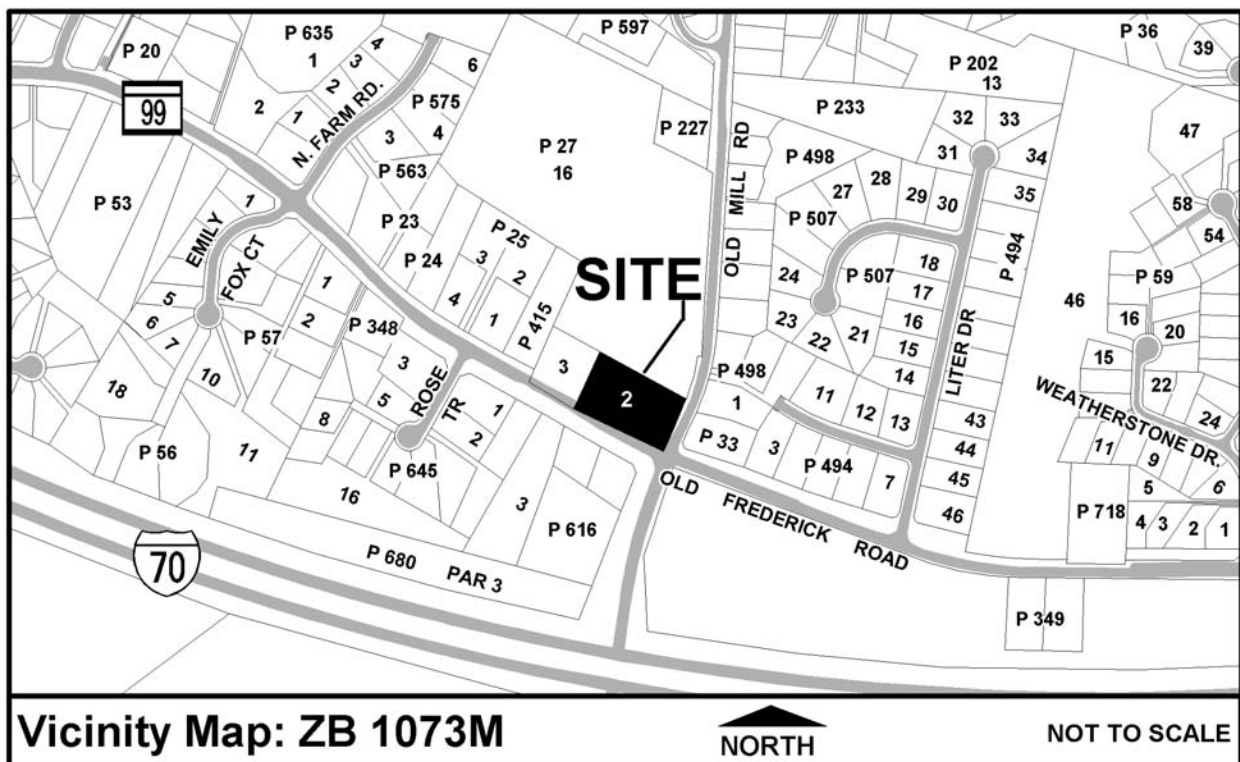
Area of Site: 1.295 acres

Current Zoning of Site: R-20 (Residential: Single)

Proposed Zoning of Site: B-1 (Business: Local)

Department of Planning and Zoning Recommendation:

DENIAL WITH OPTION



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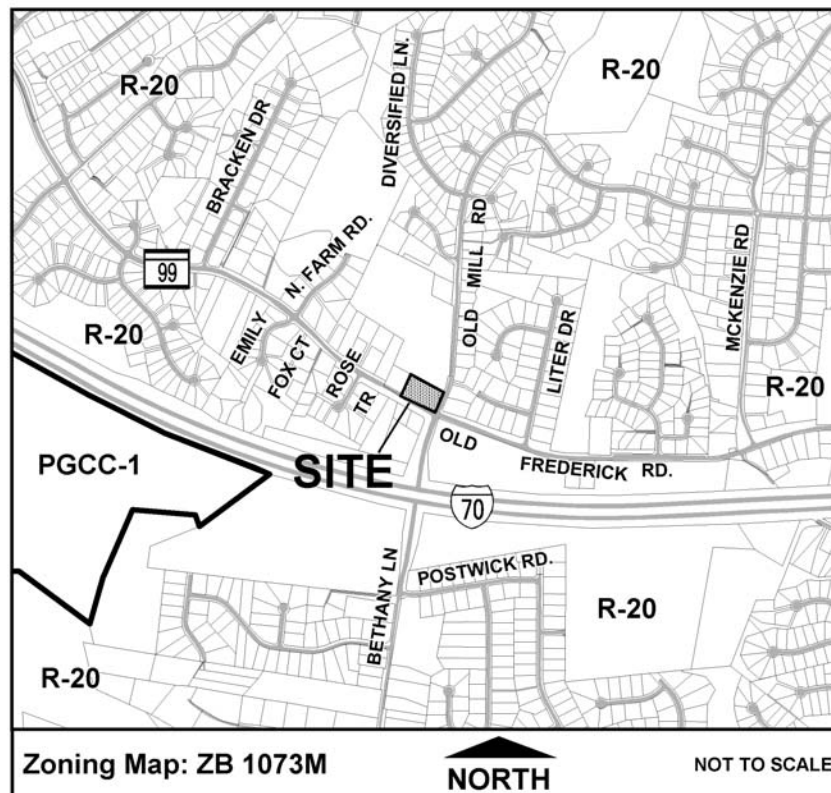
I. DESCRIPTION OF PROPOSAL

- **The Petitioners request a Zoning Map Amendment to rezone the Property from the current R-20 (Residential: Single) District to the B-1 (Business: Local) District with a documented site plan.**

The Petitioners operate a produce stand on the Site. The proposed use for the Property is listed as a farm stand/open air food market on the Petition to Amend the Zoning Map of Howard County. In the Supplement to the Petition the use is referenced as a farm produce stand, and on the documented site plan, the use is listed as a produce stand. The Site was once part of the larger Parcel 27 located generally to the north and northwest, but in 2006 a plat was recorded (F-06-002 approved May 31, 2006) to create the Site as a separate 1.29 acre lot. The large remainder of Parcel 27 was the subject of the approved BA04-049C for an age-restricted adult housing use, and that use is currently under development.

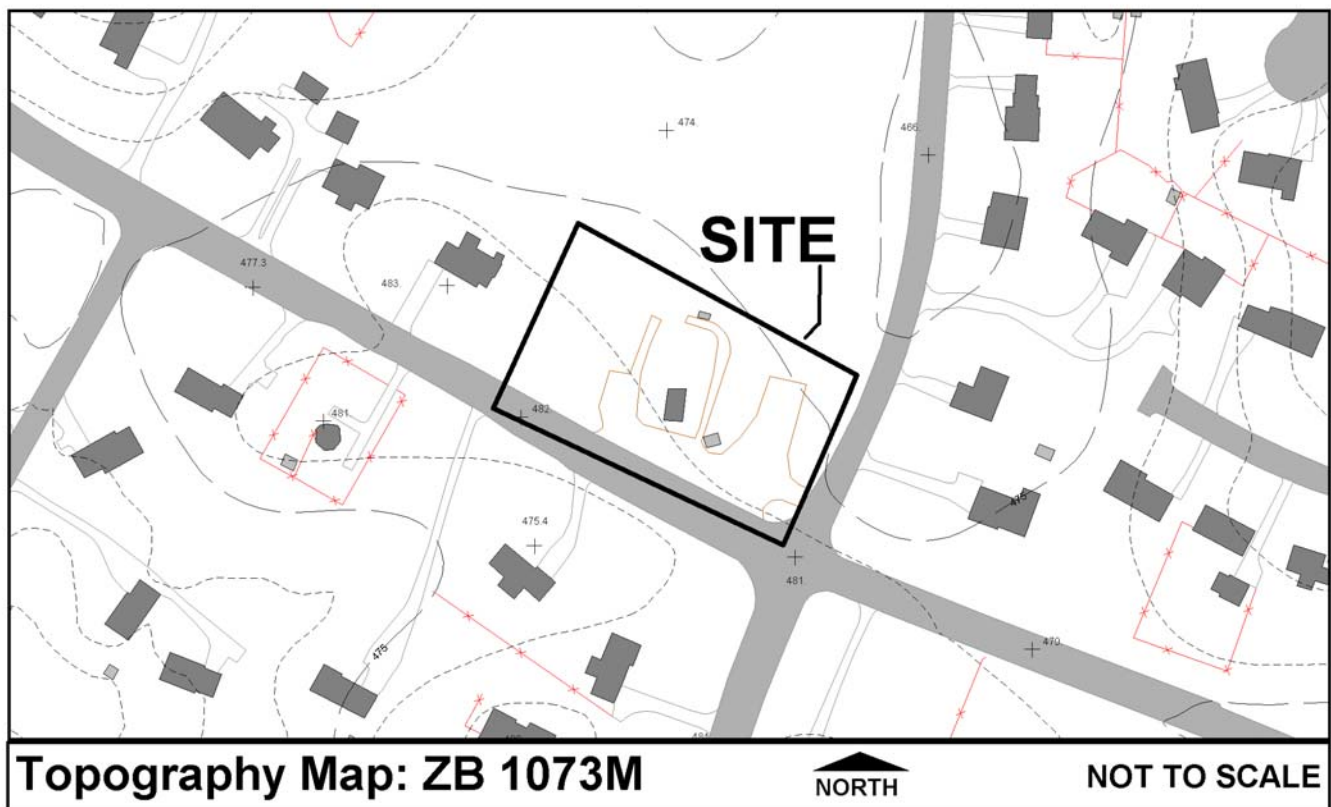
- **The Petitioners allege that the current R-20 zoning for the Property is a mistake and the justification given for this allegation is that certain issues were unknown to the County Council at the 2004 Comprehensive Zoning Plan ("CZP").**

The petition states that the Harbins were unaware until last year that they were not eligible for a nonconforming use and that if the Harbins had been aware of this at the time of comprehensive rezoning, they would have requested the rezoning during that process. The petition states that the Zoning Board was also unaware that the property did not qualify for a nonconforming use and that "If the Board had known this information, it would have rezoned the property to B-1, the lowest intensity retail use..."; and therefore, a mistake was made in not rezoning the property to B-1.



- **The request for a Zoning Map Amendment does not include an allegation of substantial change in the character of the neighborhood as a rationale to support the proposed B-1 District for the Property.**
- **This Zoning Map Amendment request is made under the Section 100.G.2. regulations for cases with site plan documentation. The proposed documented site plan, entitled “Harbin Property, Lot 2 of the Harbin Property Minor Subdivision, Produce Stand” (the “DSP”) indicates a significant redevelopment of the Site would occur.**

Under the proposal, it appears that two existing coolers (approximately 9' by 12' and 9' by 29') and a 10' by 18' wood shed would be relocated from their current positions on the Site and grouped together in the northwestern area of the Site. Two proposed 10' by 18' barns would also be located in this area. To the southeast of this group of buildings would be a new, irregularly shaped covered structure to provide shade for an area of concrete surface (20' by a minimum of 48'). This structure will be an open air roof on support posts. To the east of the wood shed would be a new 20' by 30' food preparation building with employee restrooms. The ground area beneath this group of buildings is depicted as being concrete. Further to the east would be a new approximately 117' by 69' paved outdoor seasonal display area (approximately 8,073 square feet). A proposed 534 square foot “display area w/ signs” is shown in the northeast corner of the Site.



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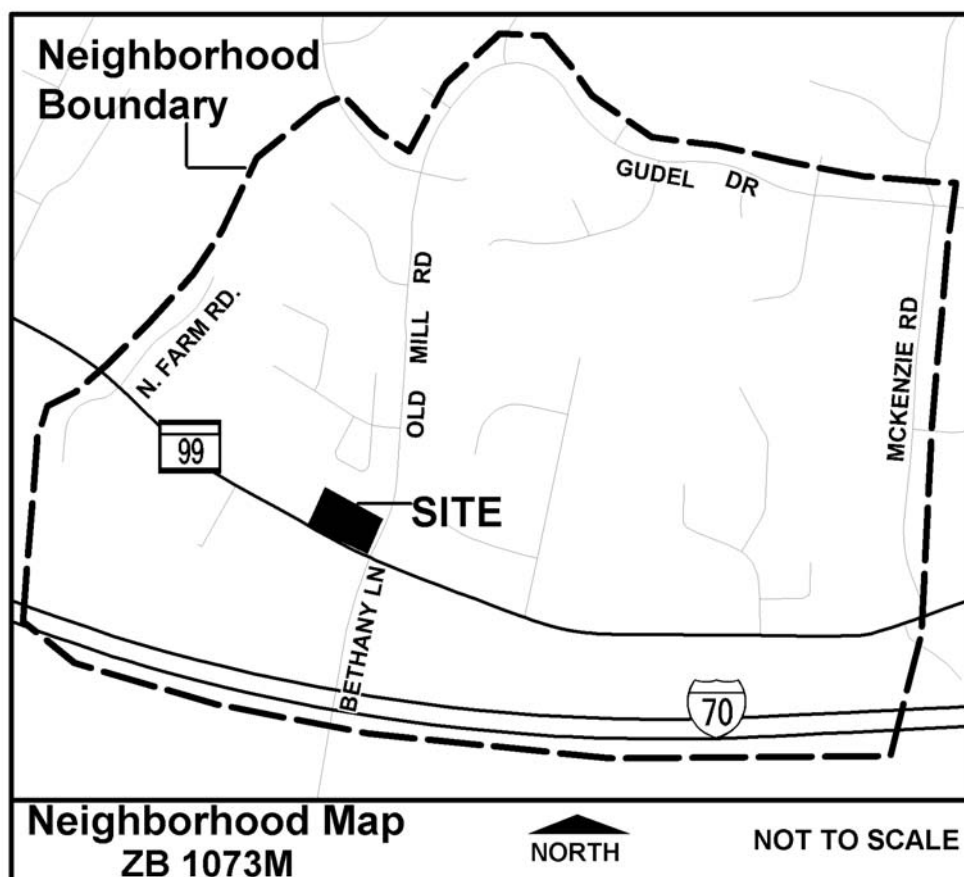
There would be two access points to the Site. A 25 foot wide driveway situated approximately 30 feet from the southwest Property corner would provide access to MD 99. A second, 24 foot wide driveway situated approximately 30 feet from the northeast Property corner would provide access to Old Mill Road. The driveway from MD 99 would continue to the north and terminate in a 16 foot wide service area to the rear of the barns and coolers. This driveway would also extend to the east along the frontage of the Site and to the northeast to tie into the driveway onto Old Mill Road. A total of 37 parking spaces would be located along this portion of the driveway.

The petition mentions some types of products to be sold such as Christmas trees and other seasonal displays, flowers, plants, baked goods and bottled/package products. The Petitioner should clarify with a detailed list/description that the products sold will continue to be items typically sold at a produce stand rather than at other types of retail businesses such as convenience stores.

- **The Site Analysis Data Chart shown on the DSP indicates that 20 parking spaces are required and 37 spaces have been provided on the Site.**

Based on a total of 1,724 square feet for proposed structures and six required parking spaces per 1,000 square feet, 11 spaces would be required. Based on a total of 8,568 square feet of proposed outdoor display area and one required parking space per 1,000 square feet, nine parking spaces would be required for a total of 20 spaces.

There is no specific parking requirement for a farm produce stand. It appears that Section 133.D.7.g. is the basis of the parking calculation shown on the DSP, and based on the requirements of this section, adequate parking has been provided.



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- **The neighborhood boundaries that are relevant to this Zoning Map Amendment request, as proposed by the Department of Planning and Zoning are depicted on Page 4 of this Technical Staff Report.**

The R-20 zoning district extends north of the Property for a distance of more than 4,000 feet; far to the south beyond I-70; and far to the east and west of the Property. Due to the relatively small size of the Property in relation to the large area of R-20 zoned land surrounding it, the neighborhood boundaries are defined by vicinal roads.

II. BACKGROUND INFORMATION

A. Site Description

- The irregularly shaped Property comprises 1.295 acres located at the northwest corner of the MD 99 intersection with Old Mill Road/Bethany Lane.

Along the eastern half of the MD 99 frontage is a paved surface that connects directly to the pavement of the road, and a paved surface continues up to the north and also has a short connection to Old Mill Road to the east. This paved area serves as a vehicle circulation area and as unmarked parking area. To the west and northwest of this paved surface is a sparsely wooded area, and within this wooded area are the barn-like shed, two wood sheds and a cooler unit. Currently, there is also an outdoor hanging-plant display area near the intersection. To the north of the cooler and sheds is an area used for outdoor storage of various pallets, boxes, and other items. A gravel area is to the west of the sheds, and this gravel area extends generally to the north where there is another wood shed. The remainder of the Site is currently undeveloped, and is either open or sparsely wooded.

B. Vicinal Properties

- All adjacent properties are also zoned R-20. Adjoining the north side of the Site is Lot 1 of Parcel 27 which is under development as an approved age-restricted adult housing development for 69 attached dwelling units (approved with BA 04-049C and SDP 05-117). Across Old Mill Road to the east are single family detached dwellings with access to that road. To the south across MD 99 are two single family detached lots, and adjoining to the west is Lot 3 of Parcel 27 which is improved with a one-story, single family detached dwelling.

C. Roads

- MD 99 at the front of the Site currently has one westbound through lane, one eastbound through lane, one eastbound left turn land onto Old Mill Road, and one eastbound right turn lane onto Bethany Lane. The pavement width is variable within a proposed 80 foot right-of-way. The posted speed limit is 40 miles per hour.
- Visibility from the proposed driveway entrances appears to be acceptable, with estimated sight distance of more than 500 feet to the north, 100 feet to the intersection to the south; 250 feet to the intersection to the east and 500 feet to the west. Precise sight distance measurements may only be determined through a detailed sight distance analysis, however.
- According to data from the Department of Public Works, the traffic volume on MD 99 west of US 29 was 15,631 AADT (average annual daily trips) as of 2007.

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D. Water and Sewer Service

- The subject Property is within the Metropolitan District and is within the 0 to 5 Year Service Area according to the Howard County Geographic Information System maps as of February, 2009. The Petitioner states that the Property is connected to public water and will be connected to public sewer in the future.

E. General Plan

- The Property is designated Residential Areas on the Policies Map 2000-2020 of the 2000 General Plan.
- MD 99 is depicted as a Minor Arterial on the Transportation Map 2000-2020 of the 2000 General Plan. Old Mill Road is depicted as a Minor Collector on this same map.

F. Agency Comments

See attached comments on the proposal from the following agencies:

1. State Highway Administration
2. Division of Land Development
3. Bureau of Environmental Health
4. Department of Inspections, Licenses and Permits

The following agency had no objections to the proposal:

1. Department of Fire and Rescue Services

G. Subdivision Review Committee

- As required by Section 100.G.2.c. of the Zoning Regulations, the site plan documentation included with this petition was evaluated by the Subdivision Review Committee. Subsequent to this evaluation, on August 4, 2008, the Department of Planning and Zoning certified that the development shown on the proposed site plan has the potential to comply with all technical requirements of the reviewing agencies, without substantial changes to the plan, in subsequent subdivision and site development plan stages of review.

H. Adequate Public Facilities Ordinance

- The petition is subject to the Adequate Public Facilities Ordinance. A site development plan for the proposed development is subject to the requirement to pass the test for adequate road facilities.

III. ZONING HISTORY

- A. Case No.: BA 07-006N
Petitioner: Edna Mae Harbin, et. al.
Request: Confirmation and enlargement of a nonconforming use for a produce stand
Action: Dismissed, January 7, 2008

As a point of clarification, the ZB 1073 M petition states, “The Department of Planning and Zoning approved the continued use of the stand as a non-conforming use”. This is incorrect; the Department of Planning and Zoning (DPZ) has not confirmed the farm stand as a nonconforming use on the Property.

In BA 07-006N, a petition was filed for a confirmation and enlargement of a nonconforming use for a produce stand on the Property. The Technical Staff Report in the case notes that the petition did not substantiate the existence of the allegedly nonconforming use produce stand and did not clearly demonstrate the continued and uninterrupted operation of the use, the criteria required for a confirmed nonconforming use. The DPZ recommended denial of the petition and noted that the enlargement would cause an adverse effect on vicinal properties, as the commercial character of the proposed development is out of character with the surrounding residential area.

The Board of Appeals case was scheduled to be heard by the Hearing Examiner on May 7, 2007. The Petitioner’s attorney requested that the case be rescheduled for late July, 2007 in order to prepare for the hearing and gather witnesses. The case was placed on the Unscheduled Docket by the Hearing Examiner and the Petitioner was advised to contact the office to reschedule the case. By Order dated January 7, 2008, the case was dismissed because it had been on the Unscheduled Docket for more than six months and the attorney had not responded to the Hearing Examiner’s letter.

- B. Case No.: CE08-150 (Previous Case No. ZC 07-090)
Action/Status: Zoning violation notice issued to property owner for the operation of an illegal business on residential property. The case is currently open.

C. Subject Property and Vicinal Properties

- With the adoption of the first County Zoning Regulations in 1948, the Site was zoned Residential.
- The 1954 Zoning Regulations and Map designated the Site as R (Residential).
- With the 1961 Zoning Regulations, the Site and the surrounding area became zoned R-20 for the first time.
- The Site retained the R-20 zoning in the 1977, 1985, 1993 and 2004 Comprehensive Zoning Plans.
- The same zoning history applies to vicinal properties to the east, west, north, and to the south beyond I-70.

IV. EVALUATIONS AND CONCLUSIONS**A. Evaluation of the Petition Concerning the Mistake Rule**

- **The Petitioners allege that the current R-20 zoning for the Property is a mistake and the justification given for this allegation is that certain issues were unknown to the County Council at the Comprehensive Zoning Plan (“CZP”).**

The petition states that the Harbins were unaware until last year that they were not eligible for a nonconforming use and that if the Harbins had been aware of this at the time of comprehensive rezoning, they would have requested the rezoning during that process. The petition states that the Zoning Board was also unaware that the property did not qualify for a nonconforming use and that “If the Board had known this information, it would have rezoned the property to B-1, the lowest intensity retail use...”; and therefore, a mistake was made in not rezoning the property to B-1.

- **The Petitioners, in answer to the petition section concerning whether the Property can be used in its present zoning classification, state “Probably”.**

The Petitioner’s contention that the County Council made a mistake would also ideally be accompanied by reasons why the Property cannot be used in its present zoning classification and why B-1 is the most appropriate district for the Property over other zoning districts. The petition does not contain any information to specifically support rezoning to B-1 other than information as to why the current use of the property should be allowed to continue. The petition states that throughout the years, it became necessary to make changes to respond to customer requests for additional items such as Christmas trees and other seasonal displays, flowers, plants, baked goods and bottled/packaged products. Further, it is stated that the site has been changed and reconfigured over the years to accommodate these customer needs.

Evidence that no reasonable use can be made of the Property in its current zoning classification would be a favorable factor in support of rezoning in the event that a finding of mistake or change has been made. However, it is unreasonable to presume the Property would have no potential for use in its current residential classification. The area has a long-standing history of R-20 zoning, and there is no basis for compelling a zoning change to B-1, a change which would be out of character with surrounding residential properties and the overall neighborhood.

- **There was no specific proposal to rezone the Property in the 2004 Comprehensive Zoning Plan and there is no evidence as to whether the County Council ever considered a rezoning in the CZP.**

The Technical Staff Report (TSR) in BA 07-006N states, “Even if there was some type of “nonconforming” farm produce sales use on the Harbin farm prior to 1977, the 1977 Zoning Regulations would have removed the nonconforming status by making it a permitted accessory use. After that, if the principal farm use is eliminated, the accessory use must be eliminated also, because an accessory use cannot be continued as a nonconforming use if the associated principal use ceases to exist. The Harbin farm no longer exists, so the existing produce stand cannot be declared as a nonconforming use”.

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It is not possible to speculate whether the County Council would have rezoned the Property to B-1 in the CZP if it had been known at that time that the Property did not qualify as a nonconforming use or that it would be subdivided in the future. The County Council would have been aware that if the Property were to be rezoned to B-1 in the CZP, any permitted use in the B-1 zoning district would have been allowed on the Property, not just a produce stand, since rezoning at that time would not have required a documented site plan. Therefore, there is no evidence to support a finding of mistake.

B. Evaluation of the Petition Concerning the Change Rule

- **There is no neighborhood defined by the Petitioners as they make no allegation of change in the character of the neighborhood; however, the Department of Planning and Zoning provides the following evaluation concerning the change rule.**

The neighborhood as defined by Department of Planning and Zoning is depicted on Page 4 of this report.

- **The Department of Planning and Zoning finds that there is no evidence of change in the character of the neighborhood.**

The Property and the neighborhood have been zoned R-20 since 1961. This neighborhood has a long standing, extremely stable history of residential zoning which has not changed in any Comprehensive Zoning Plan after 1961. There is no justification for rezoning on the basis of change.

C. Relation to the General Plan

- **A Zoning Map Amendment to rezone the Property to B-1 would be inconsistent with the long standing residential zoning of the area and the Residential Areas land use designation of the General Plan for this vicinity.**
- **Incorporating the proposed development of the Property into the neighborhood based on a rezoning to B-1 would create a potential rationale for rezoning proposals of vicinal properties on the basis of change in the character of the neighborhood. For example, there is a large (approximately 60 acres), undeveloped area on the south side of MD 99, only 250 feet east of the Property that could potentially become a zoning map amendment case if the rezoning to B-1 is approved.**

D. Evaluation of Site Plan Documentation Factors in Section 100.G.2.d.

1. The development scenario proposed with the DSP indicates significant changes which would clear the Site and create a conspicuous commercial retail development which would be out of character with the overall residential neighborhood. The DSP is not considered to be compatible with the existing and potential land uses of the surrounding areas.
2. A stormwater management area is shown along the rear of the Site. The proposed development would be concentrated toward the areas of the adjoining roads of this corner lot.
3. The development on the DSP would have access points that have been recommended for approval and determined to be safe by the State Highway Administration.

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5. As noted above, the DSP would not be considered as reasonably compatible with the Howard County General Plan because the Site is well within the interior of a large Residential Areas area.

E. Evaluation of Site Plan Design

If the Zoning Board should find that a Zoning Map Amendment is justified on the basis of mistake and/or change, the design of the development on the DSP has been determined to have the potential to comply with the technical requirements of the Subdivision Review Committee.

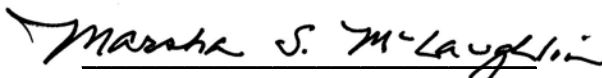
F. Evaluation of Zoning District

This Technical Staff Report finds that there is no justification for the proposed map amendment for rezoning to B-1. However, if the Zoning Board should find that a Zoning Map Amendment is justified on the basis of mistake and/or change, it would be recommended that as a condition of approval the Decision and Order include limitations which would restrict the use of the Property to only the activities as described in the petition, as clarified by the Petitioner, and as depicted on the Zoning Board Exhibit submitted on August 4, 2008 in order to preclude any future development of the Property for other permitted B-1 uses.

V. RECOMMENDATION

DENIAL WITH OPTION

For the reasons noted above, the Department of Planning and Zoning recommends that the requested Zoning Map Amendment with site plan documentation to rezone the Property from R-20 to B-1 be **DENIED WITH OPTION**.


Marsha McLaughlin, Director Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

MM/ZLK/zlk